



General Assembly

January Session, 2007

Raised Bill No. 1102

LCO No. 3625

03625_____INS

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

***AN ACT REQUIRING THE USE OF GENERALLY ACCEPTED
ACCOUNTING PRINCIPLES FOR CERTAIN AUDITS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-14 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The commissioner shall, as often as he deems it expedient,
4 examine into the affairs of any insurance company or health care
5 center doing business in this state, any corporation or association
6 collecting data utilized by any such insurance company in the
7 underwriting of insurance policies and any corporation organized
8 under any law of this state or having an office in this state, which
9 corporation is engaged in, or claiming or advertising that it is engaged
10 in, organizing or receiving subscriptions for or disposing of stock of, or
11 in any manner aiding or taking part in the formation or business of, an
12 insurance company or companies, or which is holding the capital stock
13 of one or more insurance corporations for the purpose of controlling
14 the management thereof, as voting trustees or otherwise.

15 (b) In scheduling and determining the nature, scope and frequency

16 of the examinations, the commissioner shall consider such matters as
17 the results of financial statement analyses and ratios, changes in
18 management or ownership, actuarial opinions, reports of independent
19 certified public accountants and such other criteria as set forth in the
20 examiners' handbook adopted by the National Association of
21 Insurance Commissioners and in effect at the time the commissioner
22 exercises discretion under this section.

23 (c) (1) To carry out examinations under this section, the
24 commissioner may appoint, as examiners, one or more competent
25 persons, not officers of or connected with or interested in any
26 insurance company, other than as a policyholder. The commissioner
27 may engage the services of attorneys, appraisers, independent
28 actuaries, independent certified public accountants or other
29 professionals and specialists to assist him in conducting the
30 examinations under this section as examiners, the cost of which shall
31 be borne by the company which is the subject of the examination. (2) In
32 conducting the examination, the commissioner, his actuary or any
33 examiner authorized by the commissioner may examine, under oath,
34 the officers and agents of such a company, health care center,
35 corporation or association and all persons deemed to have material
36 information regarding the company's, health care center's,
37 corporation's or association's property or business. Each such
38 company, health care center, corporation or association, its officers and
39 agents, shall produce the books and papers, in its or their possession,
40 relating to its business or affairs, and any other person may be
41 required to produce any book or paper, in his custody, deemed to be
42 relevant to such examination, for the inspection of the commissioner,
43 his actuary or examiners, when required. The officers and agents of the
44 company, health care center, corporation or association shall facilitate
45 the examination and aid the examiners in making the same so far as it
46 is in their power to do so. The refusal of any company, by its officers,
47 directors, employees or agents, to submit to examination or to comply
48 with any reasonable written request of the examiners shall be grounds
49 for suspension of, or refusal of or nonrenewal of any license or

50 authority held by the company to engage in an insurance or other
51 business subject to the commissioner's jurisdiction. Any such
52 proceedings for suspension, revocation or refusal of any license or
53 authority shall be conducted pursuant to subsection (c) of section 38a-
54 41. (3) In conducting the examination, the examiner shall observe those
55 guidelines and procedures set forth in the examiners' handbook
56 adopted by the National Association of Insurance Commissioners. The
57 commissioner may also adopt such other guidelines or procedures as
58 the commissioner may deem appropriate.

59 (d) In lieu of an examination under this section of any foreign or
60 alien insurer licensed in this state, the commissioner may accept until
61 January 1, 1994, an examination report on the company prepared by
62 the insurance department for the company's state of domicile or port-
63 of-entry state. Thereafter, such reports may only be accepted if (1) such
64 state's insurance department was, at the time of the examination,
65 accredited under the National Association of Insurance
66 Commissioners' financial regulation standards and accreditation
67 program or (2) the examination is performed under the supervision of
68 an accredited insurance department or with the participation of one or
69 more examiners who are employed by such an accredited state
70 insurance department and who, after a review of the examination
71 workpapers and report, state under oath that the examination was
72 performed in a manner consistent with the standards and procedures
73 required by their insurance department.

74 (e) (1) Nothing contained in this section shall be construed to limit
75 the commissioner's authority to terminate or suspend any examination
76 in order to pursue legal or regulatory action pursuant to the insurance
77 laws of this state. Findings of fact and conclusions made pursuant to
78 any examination shall be prima facie evidence in any legal or
79 regulatory action.

80 (2) Nothing contained in this section shall be construed to limit the
81 commissioner's authority in such legal or regulatory action to use and,

82 if appropriate, to make public any final or preliminary examination
83 report, any examiner or company workpapers or other documents, or
84 any other information discovered or developed during the course of
85 any examination.

86 (3) No later than sixty days following completion of the
87 examination, the examiner in charge shall file, under oath, with the
88 Insurance Department a verified written report of examination. Upon
89 receipt of the verified report, the Insurance Department shall transmit
90 the report to the company examined, together with a notice which
91 shall afford the company examined a reasonable opportunity, not to
92 exceed thirty days to make a written submission or rebuttal with
93 respect to any matters contained in the examination report. Within
94 thirty days of the end of the period allowed for the receipt of written
95 submissions or rebuttals, the commissioner shall fully consider and
96 review the report, together with any written submissions or rebuttals
97 and any relevant portions of the examiner's workpapers and enter an
98 order: (A) Adopting the examination report as filed or with
99 modification or corrections. If the examination report reveals that the
100 company is operating in violation of any law, regulation or prior order
101 of the commissioner, the commissioner may order the company to take
102 any action the commissioner considers necessary and appropriate to
103 cure such violation; or (B) rejecting the examination report with
104 directions to the examiners to reopen the examination for purposes of
105 obtaining additional data, documentation or information, and refile
106 pursuant to subparagraph (A) of this subdivision; or (C) calling for an
107 investigatory hearing with no less than twenty days' notice to the
108 company for purposes of obtaining additional documentation, data,
109 information and testimony.

110 (f) (1) All orders entered pursuant to subdivision (3) of subsection
111 (e) of this section shall be accompanied by findings and conclusions
112 resulting from the commissioner's consideration and review of the
113 examination report, relevant examiner workpapers and any written
114 submissions or rebuttals. The findings and conclusions, which form

115 the basis of any such order of the commissioner, shall be subject to
116 review as provided in section 38a-19. (2) Any investigatory hearing
117 conducted under subparagraph (C) of subdivision (3) of subsection (e)
118 of this section by the commissioner or authorized representative, shall
119 be conducted as a nonadversarial confidential investigatory
120 proceeding as necessary for the resolution of any inconsistencies,
121 discrepancies or disputed issues apparent (A) upon the filed
122 examination report, (B) raised by or as a result of the commissioner's
123 review of relevant workpapers or (C) by the written submission or
124 rebuttal of the company. Within twenty days of the conclusions of any
125 such hearing, the commissioner shall enter an order pursuant to
126 subparagraph (A) of subdivision (3) of subsection (e) of this section.
127 The commissioner shall not appoint an examiner as an authorized
128 representative to conduct the hearing. The hearing shall proceed
129 expeditiously with discovery by the company limited to the examiner's
130 workpapers which tend to substantiate any assertions set forth in any
131 written submission or rebuttal. The commissioner or his authorized
132 representative may issue subpoenas for the attendance of any
133 witnesses or the production of any documents deemed relevant to the
134 investigation whether under the control of the department, the
135 company or other persons. The documents produced shall be included
136 in the record and testimony taken by the commissioner or his
137 authorized representative shall be under oath and preserved for the
138 record. Nothing contained in this section shall require the department
139 to disclose any information or records which would indicate or show
140 the existence or content of any investigation or activity of a criminal
141 justice agency. The hearing shall proceed with the commissioner or his
142 authorized representative posing questions to the persons subpoenaed.
143 Thereafter the company and the Insurance Department may present
144 testimony relevant to the investigation. Cross-examination shall be
145 conducted only by the commissioner or his authorized representative.
146 The company and the Insurance Department shall be permitted to
147 make closing statements and may be represented by counsel of their
148 choice.

149 (g) The commissioner may, if he deems it in the public interest,
150 publish any such report, or the result of any such examination
151 contained therein, in one or more newspapers of the state.

152 (h) The commissioner shall, at least once in every five years, visit
153 and examine the affairs of each domestic insurance company, health
154 care center, domestic fraternal benefit society, and foreign and alien
155 insurance company doing business in this state. Notwithstanding
156 subdivision (1) of subsection (c) of this section, no domestic insurance
157 company or other domestic entity subject to examination under this
158 section shall pay as costs associated with the examination the salaries,
159 fringe benefits, traveling and maintenance expenses of examining
160 personnel of the Insurance Department engaged in such examination if
161 such domestic company or entity is otherwise liable to assessment
162 levied under section 38a-47, except that a domestic insurance company
163 or other domestic entity shall pay the traveling and maintenance
164 expenses of examining personnel of the Insurance Department when
165 such company or entity is examined outside the state.

166 (i) Nothing contained in this section shall prevent or be construed as
167 prohibiting the commissioner from disclosing the content of an
168 examination report, preliminary examination report or results, or any
169 matter relating thereto, to the Insurance Department of this or any
170 other state or country, or to law enforcement officials of this or any
171 other state or to any agency of the federal government at any time, so
172 long as such agency or office receiving the report or matters relating
173 thereto agrees in writing to hold it confidential.

174 (j) All working papers, recorded information, documents and copies
175 thereof produced by, obtained by or disclosed to the commissioner or
176 any other person in the course of an examination made under this
177 section shall be given confidential treatment, shall not be subject to
178 subpoena and shall not be made public by the commissioner or any
179 other person, except to the extent provided in subsection (i) of this
180 section. Access to such information may be granted by the

181 commissioner to the National Association of Insurance Commissioners
182 so long as it agrees, in writing, to hold it confidential.

183 (k) (1) The commissioner may engage the services of, from time to
184 time, on an individual basis, qualified actuaries, certified public
185 accountants, or other similar individuals who are independently
186 practicing their professions, even though said persons may from time
187 to time be similarly employed or retained by persons subject to
188 examination under this section. (2) No cause of action shall arise nor
189 shall any liability be imposed against the commissioner, the
190 commissioner's authorized representatives or any examiner appointed
191 by the commissioner for any statements made or conduct performed in
192 good faith while carrying out the provisions of this section. (3) No
193 cause of action shall arise, nor shall any liability be imposed against
194 any person for the act of communicating or delivering information or
195 data to the commissioner or the commissioner's authorized
196 representative examiner pursuant to an examination made under this
197 section, if such act of communication or delivery was performed in
198 good faith and without fraudulent intent or the intent to deceive. (4)
199 This section does not abrogate or modify in any way any common law
200 or statutory privilege or immunity heretofore enjoyed by any person
201 identified in subdivision (2) of this subsection. (5) A person identified
202 in subdivision (2) of this subsection shall be entitled to an award of
203 attorney's fees and costs if he is the prevailing party in a civil cause of
204 action for libel, slander or any other relevant tort arising out of
205 activities in carrying out the provisions of this section and the party
206 bringing the action was not substantially justified in doing so. For
207 purposes of this section a proceeding is "substantially justified" if it
208 had a reasonable basis in law or fact at the time that it was initiated.

209 (l) In lieu of an examination under this section of any employer
210 mutual association organized prior to June 6, 1996, with a membership
211 composed exclusively of health care providers and whose premium
212 base is derived entirely from health care organizations, the
213 commissioner may accept a statement of financial condition that shall

214 be audited by an independent certified public accountant using
215 generally accepted accounting principles. Such financial statements
216 shall be submitted before June first and following the end of the fiscal
217 year and shall be in such form and contain such information as the
218 commissioner shall specify in regulations adopted in accordance with
219 chapter 54.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	38a-14
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Statement of Purpose:

To allow employer mutual associations organized prior to June 6, 1996, to submit to the Insurance Commissioner a statement of financial condition audited by an independent certified public accountant using generally accepted accounting principles.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]